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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

IN RE APPLE INC. SECURITIES  
 LITIGATION

Case No. C06-05208-JF

CLASS ACTION

THIS DOCUMENT RELATES TO:  
 ALL ACTIONS

**NOTICE OF JOINT MOTION AND  
 JOINT MOTION FOR HEARING ON  
 SHORTENED TIME; MEMORANDUM  
 OF POINTS AND AUTHORITIES IN  
 SUPPORT THEREOF; AND  
 DECLARATION OF VIVI LEE IN  
 SUPPORT THEREOF**

Date: N/A  
 Time: N/A  
 Department: Ctrm. 3, 5th Floor  
 Judge: Honorable Jeremy Fogel

**NOTICE OF JOINT MOTION AND JOINT MOTION**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that pursuant to Local Rule 6-3, Lead Plaintiff, the New York City Employees' Retirement System, plaintiffs Martin Vogel and Kenneth Mahoney, and defendants Apple Inc., Steven P. Jobs, Fred D. Anderson, Nancy R. Heinen, William V. Campbell, Millard S. Drexler, Arthur D. Levinson, and Jerome B. York, respectfully submit this joint motion for an order setting the hearing on Lead Plaintiff's motion for entry of the proposed Order Preliminarily Approving Settlement, Directing Notice of Settlement, and Scheduling Settlement Fairness Hearing ("Preliminary Approval Motion") on shortened time for October 7, 2010, at 10:00 a.m.

This motion is based on this notice of motion and motion, the attached memorandum of points and authorities in support thereof, the accompanying Declaration of Vivi Lee, the proposed Order, and the Court's files in this action.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Lead Plaintiff, the New York City Employees' Retirement System, plaintiffs Martin Vogel and Kenneth Mahoney, and defendants Apple Inc., Steven P. Jobs, Fred D. Anderson, Nancy R. Heinen, William V. Campbell, Millard S. Drexler, Arthur D. Levinson, and Jerome B. York entered into a Stipulation and Agreement of Settlement dated as of September 28, 2010 (the "Stipulation"), to resolve this action. Pursuant to the Stipulation, the parties agreed to request that the Court enter the proposed Order Preliminarily Approving Settlement, Directing Notice of Settlement, and Scheduling Settlement Fairness Hearing ("Preliminary Approval Order"). Lead Plaintiff's Preliminary Approval Motion, filed concurrently herewith, requests that the Court, among other things, preliminarily approve the settlement; conditionally certify the class for settlement purposes; direct that notice of the settlement be provided to putative class members; and schedule a "Settlement Fairness Hearing." All defendants join in Lead Plaintiff's request that the Court enter the Preliminary Approval Order. The parties do not expect any opposition to the Preliminary Approval Motion, as class members will have the opportunity to object to the settlement, the plan of allocation, and the application of Plaintiffs' Lead Counsel, Grant & Eisenhofer P.A., for an award of attorneys' fees and expenses at the Settlement Fairness Hearing. The parties previously confirmed with the Court that it was available on October 7, 2010, at 10:00 a.m. (Declaration of Vivi Lee, filed herewith, at ¶¶ 3-4.) Thus, the parties jointly request that the Court hear the Preliminary Approval Motion on shortened time on October 7, 2010, at 10:00 a.m.

**II. ARGUMENT**

At the preliminary approval stage, a reviewing court must determine only if a proposed settlement falls "within the range of possible approval" based on factors such as "the strength of plaintiffs' case," "the risk, expense, complexity, and likely duration of further litigation," and the "amount offered in settlement," as well as "the experience and view of counsel." *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 625 (9th Cir. Cal. 1982); *accord Torrasi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375, 1377 (9th Cir. 1993); *Manual for Complex Litigation* § 13.14 at 173, § 30.41 at 237 (3d ed. 1995). If a court grants preliminary approval, notice of the

1 proposed settlement is given to class members. *Manual for Complex Litigation* § 30.41 at 237.  
 2 The ultimate determination of whether to approve the settlement is made after class members  
 3 have the opportunity to comment on the settlement and the court has held a final fairness hearing.  
 4 See 5 Moore's Federal Practice 23.83[1] at 23-336.2 to 23-339 (3d ed. 2002).

5 In the concurrently filed papers in support of the Preliminary Approval Motion, the parties  
 6 have proposed a schedule regarding the notice to class members, the time for class members to  
 7 seek exclusion from the class or submit objections to the settlement, and the filing of papers in  
 8 support of the settlement, plan of allocation, and Plaintiffs' Lead Counsel's application for an  
 9 award of attorneys' fees and expenses. The parties believe the proposed schedule affords class  
 10 members sufficient time to consider the settlement, the plan of allocation, and Plaintiffs' Lead  
 11 Counsel's application for an award of attorneys' fees and expenses and to determine whether they  
 12 want to seek exclusion from the class or object. The parties also believe the proposed schedule  
 13 affords the Court sufficient time to consider whether the settlement and plan of allocation are fair,  
 14 reasonable and adequate and should be finally approved, and whether Plaintiffs' Lead Counsel's  
 15 application for an award of attorneys' fees and expenses is reasonable and should be approved.

16 A later hearing date for the Preliminary Approval Motion would extend the dates in the  
 17 parties' proposed schedule for the review and approval of the settlement and may prejudice  
 18 potential class members by delaying the time for distribution of the settlement fund. A delay in  
 19 the resolution of this action would also prejudice the parties, as this action has been pending for  
 20 more than 4 years.

### 21 **III. CONCLUSION**

22 Based on the foregoing, the parties respectfully request that the Court set the hearing on  
 23 the Preliminary Approval Motion on shortened time for October 7, 2010, at 10:00 a.m.

24 Dated: September 28, 2010

GEORGE A. RILEY  
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26 By: /s/ George A. Riley  
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28 Attorneys for Defendant  
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1 Dated: September 28, 2010

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1 Dated: September 28, 2010

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23 Attorneys for Plaintiffs  
24 MARTIN VOGEL and KENNETH  
25 MAHONEY

**DECLARATION OF VIVI LEE**

I, VIVI LEE, declare as follows:

1. I am an attorney duly licensed before all of the courts of the State of California and the United States District Court for the Northern District of California. I am an associate in the law firm of O'Melveny & Myers LLP, counsel of record for defendant Apple Inc. I make this declaration in support of the Joint Motion for Hearing on Shortened Time. I have personal knowledge of the matters stated herein and, if called upon, could competently testify thereto.

2. The parties to the action have entered into a Stipulation and Agreement of Settlement dated as of September 28, 2010, to resolve this action. Pursuant to the Stipulation, the parties agreed to request that the Court enter the proposed Order Preliminarily Approving Settlement, Directing Notice of Settlement, and Scheduling Settlement Fairness Hearing.

3. I spoke to Christian Delany, administrative law clerk to Judge Jeremy Fogel, regarding the Court's availability for the hearing for the Preliminary Approval Motion. Ms. Delaney confirmed that the Court was available on October 7, 2010, at 10:00 a.m. Ms. Delaney requested that the parties file a motion requesting that the Court hear the Preliminary Approval Motion on shortened time.

4. Counsel for the parties have informed me that they are all available on October 7, 2010, at 10:00 a.m. for the hearing and wish to have the Preliminary Approval Motion heard at that time.

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